

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

IN RE: PORTFOLIO RECOVERY ASSOCIATES, LLC, TELEPHONE CONSUMER PROTECTION ACT LITIGATION) Case No. 11md2295 JAH(BGS)
This document relates to:
Case No. 13cv0029 JAH(BGS)
ORDER DENYING KAREN HUBBARD'S MOTION FOR SUGGESTION OF REMAND [DOC. # 85]

INTRODUCTION

Currently pending before this Court is the motion for a suggestion of remand filed by plaintiff Karen Hubbard (“plaintiff Hubbard”). The motion has been fully briefed. After a careful consideration of the pleadings and relevant exhibits submitted, and for the reasons set forth below, this Court DENIES plaintiff Hubbard’s motion for suggestion of remand.

BACKGROUND

The instant case was transferred to this Court on December 21, 2011 from the Judicial Panel on Multidistrict Litigation (“the MDL Panel”). The case consists of five consolidated putative class action cases and twenty “tag-along” actions, each seeking relief from defendant Portfolio Recovery Associates, LLC (“defendant” or “PRA”) based on allegations that defendant violated the Telephone Consumer Protection Act (“TCPA”) by

1 calling cellular telephone numbers with an automatic telephone dialing system ("ATDS")
 2 without prior express consent.

3 On March 28, 2013, plaintiff Hubbard filed her motion for a suggestion of remand
 4 of her individual complaint originally filed in the Western District of North Carolina.
 5 Defendant filed an opposition to the motion on April 29, 2013. Plaintiff Hubbard did
 6 not file a reply brief. This Court subsequently took the motion under submission without
 7 oral argument. *See CivLR 7.1(d.1).*

DISCUSSION

1. Legal Standard

10 The power to remand a case to the transferor court lies solely with the MDL Panel.
 11 28 U.S.C. § 1407(a); *In re Bridgestone/Firestone, Inc.*, 128 F.Supp.2d 1196, 1197 (S.D.
 12 Ind. 2001); *see also In re Roberts*, 178 F.3d 181, 183 (3d Cir.1999). In determining
 13 whether to issue a suggestion for remand to the MDL Panel, this Court is guided by the
 14 standards for remand employed by the MDL Panel. *Bridgestone/Firestone*, 128 F.Supp.2d
 15 at 1197. Where, as here, pretrial proceedings have not been concluded, the question of
 16 whether remand is appropriate is left to the court's discretion and generally turns on the
 17 question of whether the case will benefit from further coordinated proceedings as part of
 18 the MDL. *In re Patenaude*, 210 F.3d 135, 145 (3d Cir.2000); *In re Air Crash Disaster*,
 19 461 F.Supp. 671, 672–73 (Jud.Pan.Mult.Lit.1978). The MDL Panel has discretion to
 20 remand, for example, when everything that remains to be done is case-specific. *Patenaude*,
 21 210 F.3d at 145.

22 2. Analysis

23 Plaintiff Hubbard contends her case does not benefit from being included in these
 24 coordinated proceedings and claim the only things remaining to be done in her case is
 25 case-specific. Doc. # 85-2 at 1-2. Plaintiff Hubbard first notes her complaint relief from
 26 defendant and William J. Allen, P.A. ("Allen"), pointing out that discovery in her case has
 27 been completed, her FDCPA and North Carolina claims have been fully briefed and
 28 summary judgment motions by all three parties had already been filed prior to transfer.

1 Id. at 1-2, 6-7. Plaintiff Hubbard thus contends remand of her case is appropriate. Id. at
 2 7. In the alternative, plaintiff Hubbard suggests that her FDCPA and North Carolina
 3 claims against defendant Allen be bifurcated and remanded separately for adjudication in
 4 North Carolina. Id.

5 In opposition, defendant contends there are “overarching questions [that] must be
 6 answered in all actions, including Hubbard, such as: whether [defendant] used an
 7 ‘automatic dialing system’ to call the plaintiffs; whether any such calls were made to
 8 cellular telephone number without prior consent; whether any purported violations of the
 9 TCPA were willful and knowing; and whether recovery for the plaintiffs under the TCPA
 10 would violate [defendant’s] constitutional rights.” Doc. # 95 at 5. Defendant contends
 11 “[t]he Hubbard tag-along action will benefit from further consolidated proceedings since
 12 its inclusion will eliminate significant duplication of effort and expense to all involved and
 13 avoid the very real risk of inconsistent rulings,” noting plaintiff Hubbard has not yet
 14 demonstrated that defendant used an ATDS, as defined by the TCPA and, as such, her
 15 arguments that no further discovery is needed and only case specific issues remain fail. Id.
 16 at 5-6.

17 In addition, defendant points out the MDL Panel, as well as this Court, “found that
 18 consolidation was warranted and necessary even though summary judgment had been
 19 briefed” when the issue was presented by plaintiff Bartlett in her objections to transfer and
 20 subsequent motion seeking a suggestion of remand. Id. at 7. Defendant also points out
 21 that plaintiff Hubbard had the opportunity to oppose the MDL Panel’s conditional
 22 transfer order and did not do so, essentially acquiescing to the MDL Panel’s determination
 23 that plaintiff Hubbard’s case shares common facts with the transfer cases and that transfer
 24 of the Hubbard case “would serve ‘the convenience of the parties and witnesses’ and
 25 promote ‘the just and efficient conduct of the actions.’” Id. at 8 (quoting MDL Doc.
 26 # 82). Defendant maintains there is no reason to abandon that determination, noting
 27 such requests are generally denied. Id. (citing In re Ameriquest Mortg. Co. Mortg.
 28 Lending Practices Litig., 2010 U.S. Dist. LEXIS *4 (N.D. Ill. Apr. 6, 2010)(finding the

1 plaintiff acquiesced to the MDL Panel's determination regarding common facts because
 2 the plaintiff did not challenge the Panel's initial determination despite having the
 3 opportunity to do so and found no reason to abandon that judgment)).

4 In regards to plaintiff Hubbard's alternative request, defendant argues that plaintiff
 5 Hubbard provides no case authority supporting such a request. Id. at 9. In addition,
 6 defendant points out plaintiff Hubbard fails to identify any benefit that might result from
 7 bifurcation and fails to "explain how any unstated benefits could outweigh the recognized
 8 efficiencies gained by continued consolidation." Id. Defendant notes plaintiff Hubbard's
 9 FDCPA and North Carolina claims relate to the same facts and parties at issue in the
 10 TCPA claim at bar here. Id. Thus, defendant contends plaintiff Hubbard's bifurcation
 11 request should also be denied. Id.

12 This Court is mindful that plaintiff Hubbard has not demonstrated defendant used
 13 an ATDS, as defined by the TCPA and, thus, the issue is still ripe for adjudication in these
 14 coordinated proceedings. This Court agrees with defendant that all of the cases transferred
 15 to this Court by the MDL Panel have common questions of fact that have yet to be
 16 answered and finds there is more to be resolved in the Hubbard case than only case-
 17 specific issues. This Court further finds plaintiff Hubbard's alternative request for
 18 bifurcation of her claims against defendant Allen is unsupported by case authority and
 19 significantly understates the recognized benefits of coordinated proceedings such as this
 20 one. Thus, this Court finds plaintiff Hubbard's case will benefit from further coordinated
 21 proceedings and further finds the inclusion of the Hubbard case in these coordinated
 22 proceedings will preserve judicial and party resources and avoid the chance of inconsistent
 23 rulings. Therefore, this Court sees no reason to disturb the MDL Panel's initial
 24 determination that this case is appropriate for transfer to these coordinated proceedings
 25 and, accordingly, DENIES plaintiff Hubbard's motion for suggestion of remand.

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CONCLUSION AND ORDER

Based on the foregoing, IT IS HEREBY ORDERED that plaintiff Hubbard's motion for suggestion of remand [doc. #] is **DENIED**. in its entirety.

DATED: September 23, 2013

JOHN A. HOUSTON
United States District Judge